

ESTTA Tracking number: **ESTTA475527**Filing date: **05/31/2012**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Notice of Opposition**

Notice is hereby given that the following parties oppose registration of the indicated application.

Opposers Information

| | | | |
|---------|--|-------------|---------|
| Name | USA Nutraceuticals Group, Inc. | | |
| Entity | Corporation | Citizenship | Florida |
| Address | 10538 RIO HERMOSO DELRAY BEACH, FL 33446 UNITED STATES | | |

| | | | |
|---------|--|-------------|---------|
| Name | Ultra-Lab Nutrition, Inc. d/b/a Beast Sports | | |
| Entity | Corporation | Citizenship | Florida |
| Address | 10538 RIO HERMOSO DELRAY BEACH, FL 33446 UNITED STATES | | |

| | |
|----------------------|--|
| Attorney information | Ryan M. Kaiser AMIN TALATI, LLC 225 N. Michgian Ave. Suite 700 Chicago, IL 60601 UNITED STATES ryan@amintalati.com, trademark@amintalati.com Phone:312-327-3328 |
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Applicant Information

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|------------------------|--|------------------------|------------|
| Application No | 85543622 | Publication date | 05/01/2012 |
| Opposition Filing Date | 05/31/2012 | Opposition Period Ends | 05/31/2012 |
| Applicant | Monster Energy Company Suite 201 550 Monica Circle Corona, CA 92880 UNITED STATES | | |

Goods/Services Affected by Opposition

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| Class 005. First Use: 2011/03/02 First Use In Commerce: 2011/03/02 All goods and services in the class are opposed, namely: Nutritional supplements in liquid form |
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Grounds for Opposition


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| Priority and likelihood of confusion | Trademark Act section 2(d) |
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Marks Cited by Opposer as Basis for Opposition


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|-----------------------|------------|-----------------------|------------|
| U.S. Registration No. | 2012763 | Application Date | 03/23/1995 |
| Registration Date | 10/29/1996 | Foreign Priority Date | NONE |

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|---------------------|---|
| Word Mark | THE BEAST |
| Design Mark | |
| Description of Mark | NONE |
| Goods/Services | Class 005. First use: First Use: 1996/04/01 First Use In Commerce: 1996/05/01 vitamins and nutritional food supplements |

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|-----------------------|---|-----------------------|------------|
| U.S. Registration No. | 3978998 | Application Date | 02/01/2010 |
| Registration Date | 06/14/2011 | Foreign Priority Date | NONE |
| Word Mark | BEAST MODE | | |
| Design Mark |  | | |
| Description of Mark | NONE | | |
| Goods/Services | Class 005. First use: First Use: 2010/02/01 First Use In Commerce: 2011/03/01 Dietary and nutritional supplements | | |

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|----------------------|--|-----------------------|------------|
| U.S. Application No. | 77663693 | Application Date | 02/04/2009 |
| Registration Date | NONE | Foreign Priority Date | NONE |
| Word Mark | THE BEAST CYCLE | | |
| Design Mark |  | | |
| Description of Mark | NONE | | |
| Goods/Services | Class 005. First use: Dietary and nutritional supplements | | |

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|----------------------|----------|------------------|------------|
| U.S. Application No. | 77663433 | Application Date | 02/04/2009 |
|----------------------|----------|------------------|------------|

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|---------------------|--|-----------------------|------|
| Registration Date | NONE | Foreign Priority Date | NONE |
| Word Mark | THE BEAST STACK | | |
| Design Mark |  | | |
| Description of Mark | NONE | | |
| Goods/Services | Class 005. First use: Dietary and nutritional supplements | | |

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|-----------------------------------|-------------------------------------|------------------|------|
| U.S. Application/Registration No. | NONE | Application Date | NONE |
| Registration Date | NONE | | |
| Word Mark | BEAST | | |
| Goods/Services | Dietary and nutritional supplements | | |

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|-----------------------------------|-------------------------------------|------------------|------|
| U.S. Application/Registration No. | NONE | Application Date | NONE |
| Registration Date | NONE | | |
| Word Mark | BEAST SPORTS | | |
| Goods/Services | Dietary and nutritional supplements | | |

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|-----------------------------------|-------------------------------------|------------------|------|
| U.S. Application/Registration No. | NONE | Application Date | NONE |
| Registration Date | NONE | | |
| Word Mark | UNLEASH THE BEAST | | |
| Goods/Services | Dietary and nutritional supplements | | |

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|---------------------|-----------------------|
| Related Proceedings | 91199986 and 91202947 |
|---------------------|-----------------------|

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| Attachments | 77925401#TMSN.jpeg (1 page)(bytes) 77663693#TMSN.jpeg (1 page)(bytes) 77663433#TMSN.jpeg (1 page)(bytes) DRAFT Notice of Opp REHAB THE BEAST BEAST.pdf (7 pages)(50364 bytes) THE BEAST Reg.pdf (3 pages)(53640 bytes) BEAST MODE Reg.pdf (1 page)(25598 bytes) |
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address

record by First Class Mail on this date.

| | |
|-----------|------------------|
| Signature | /Ryan M. Kaiser/ |
| Name | Ryan M. Kaiser |
| Date | 05/31/2012 |

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

USA NUTRACEUTICALS GROUP, INC.

and

ULTRA-LAB NUTRITION, INC., d/b/a
BEAST SPORTS,

Opposers,

v.

MONSTER ENERGY COMPANY, INC.,

Applicant.

Opposition No.: _____

NOTICE OF OPPOSITION

Appl. Serial No.: 85/543,622
Filing Date: Feb. 15, 2012
Publication Date: May 1, 2012

NOTICE OF OPPOSITION

USA Nutraceuticals Group, Inc. and Ultra-Lab Nutrition, Inc., d/b/a Beast Sports (collectively “Opposers” and “Beast Sports”) believe that they will be damaged by registration of the mark REHAB THE BEAST! WWW.MONSTERENERGY.COM (“Applicant’s Mark”) for “Nutritional supplements in liquid form” (IC 005) in Application Serial No. 85/543,622 (the “Application”). Accordingly, Opposers hereby oppose the Application. The grounds for this opposition are as follows:

Parties

1. Opposer USA Nutraceuticals Group, Inc. is a Florida corporation with an address at 3100 N.W. 2nd Avenue, Suite 213, Boca Raton, Florida.
2. Opposer Ultra-Lab Nutrition, Inc., d/b/a Beast Sports is a Florida corporation with an address at 3100 N.W. 2nd Avenue, Suite 213, Boca Raton, Florida.

3. Ultra-Lab Nutrition, Inc., d/b/a Beast Sports is the parent of USA Nutraceuticals Group, Inc. USA Nutraceuticals Group, Inc. and Ultra-Lab Nutrition, Inc., d/b/a Beast Sports will collectively be referred to as “Opposers.”

4. On information and belief, Applicant is a Delaware corporation with its principal place of business located at 550 Monica Circle, Suite 201, Corona, CA 92880. On information and belief, Applicant is the owner of the subject opposed Application Serial No. 85/543,622.

Opposed Application

5. On February 15, 2012, Applicant filed use-based application, Application Serial No. 85/543,622, to register REHAB THE BEAST! WWW.MONSTERENERGY.COM for “Nutritional supplements in liquid form” (IC 005).

Opposers’ Trademark Rights

6. Opposer USA Nutraceuticals Group, Inc. is the owner by assignment of U.S. Trademark Registration No. 2,012,763 for THE BEAST for “Vitamin and nutritional food supplements” (IC 005). Opposer Ultra-Lab Nutrition, Inc., d/b/a Beast Sports is the exclusive licensee of U.S. Trademark Registration No. 2,012,763. Opposers’ THE BEAST trademark registration is now incontestable.

7. Opposer USA Nutraceuticals Group, Inc. is the owner of U.S. Trademark Registration No. 3,978,998 for BEAST MODE for “Dietary and nutritional supplements” (IC 005).

8. Opposer USA Nutraceuticals Group, Inc. is the owner of U.S. Trademark Application Serial No. 77/663,693 for THE BEAST CYCLE for “Dietary and nutritional supplements” (IC 005).

9. Opposer USA Nutraceuticals Group, Inc. is the owner of U.S. Trademark Application Serial No. 77/663,433 for THE BEAST STACK for “Dietary and nutritional supplements” (IC 005).

10. Opposers own other valuable common law trademark rights to various marks incorporating the word “BEAST.” Those marks include, without limitation: BEAST; BEAST SPORTS; and UNLEASH THE BEAST.

11. Opposers’ above trademark rights are collectively referred to as Opposers’ “BEAST Marks.”

12. Consumers have come to recognize products advertised and sold under Opposers’ BEAST Marks by the common “BEAST” portion of their name, as being related and coming from a common source, Opposers.

13. Since long prior to the date on which Applicant filed the intent-to-use application opposed herein, Opposers have continually used their BEAST family of marks in connection with the advertising, promotion and sale of dietary and nutritional supplement products.

Other Allegations

14. Applicant’s use and application to register the mark REHAB THE BEAST! WWW.MONSTERENERGY.COM is without Opposers’ consent.

15. Applicant has no basis for claiming rights in the REHAB THE BEAST! WWW.MONSTERENERGY.COM mark with respect to goods in International Class 005, prior to Opposers’ first use and/or registration of the BEAST Marks (or any of them). Opposers have used one or more of their BEAST Marks in commerce since at least as early as May 1st, 1996.

16. Opposers have not abandoned their BEAST Marks in connection with any of Opposers’ goods or services.

17. Opposers' BEAST Marks and Applicant's Mark are highly similar—both make prominent use of the word "BEAST." Because of the similarity of the marks at issue and the fact that the goods and services are legally identical, Applicant's Mark so resembles Opposers' BEAST Marks as to be likely under Section 2(d) of the Trademark Act to create confusion, or to cause mistake, or to deceive as to the origin, sponsorship, or approval of Applicant's goods and services, and suggest an affiliation or connection between Applicant's goods and services and Opposers' goods and services.

18. The registration of Applicant's Mark in International Class 005 would prevent Opposers from exercising exclusive control over the goodwill and reputation associated with Opposers' BEAST Marks, and any defect, fault, or deficiency in Applicant's goods or services could negatively reflect on Opposers' BEAST Marks. Therefore, a grant of registration of Applicant's Mark would damage and injure Opposers.

19. Opposers will be further damaged by the registration of Applicant's Mark because the registration of Applicant's Mark will support statutory rights that may conflict or supersede Opposers' prior statutory and common law rights.

WHEREFORE, Opposers request that the mark in Application Serial No. 85/543,622 be denied registration with respect to in International Class 005.

May 31, 2012

Respectfully submitted,

AMIN TALATI, LLC

By: /s/ Ryan M. Kaiser

Ryan M. Kaiser

225 N. Michigan Ave.Suite 700
Chicago, IL 60601
UNITED STATES

www.amintalati.com

Ryan@AminTalati.com

ATTORNEYS FOR USA NUTRACEUTICALS
GROUP, INC. AND ULTRA-LAB NUTRITION, INC.,
d/b/a BEAST SPORTS

Certificate of Service

I hereby certify that on this 31st day of May, 2012, the forgoing **Notice** was served, by mailing same by US First Class mail, on the following correspondent as set forth in the records of the U.S. Patent and Trademark Office:

Monster Energy Company
Suite 201
550 Monica Circle
Corona, CA 92880

/s/ Ryan M. Kaiser
Ryan M. Kaiser

CERTIFICATE OF TRANSMISSION

I, Ryan M. Kaiser, hereby certify that the forgoing **Notice** is being electronically transmitted to the United States Patent and Trademark Office today, May 31, 2012.

Dated: May 31, 2012

/s/ Ryan M. Kaiser
Ryan M. Kaiser

Int. Cl.: 5

Prior U.S. Cls.: 6, 18, 44, 46, 51, and 52

Reg. No. 2,012,763

United States Patent and Trademark Office Registered Oct. 29, 1996

**TRADEMARK
PRINCIPAL REGISTER**

THE BEAST

ULTRA-LAB NUTRITION, INC. (FLORIDA
CORPORATION)
350 CLUB CIRCLE, SUITE 205
BOCA RATON, FL 33487

FIRST USE 4-1-1996; IN COMMERCE
5-1-1996.

SN 74-650,530, FILED 3-23-1995.

FOR: VITAMINS AND NUTRITIONAL FOOD
SUPPLEMENTS, IN CLASS 5 (U.S. CLS. 6, 18, 44,
46, 51 AND 52).

JOYCE A. WARD, EXAMINING ATTORNEY

Int. Cl.: 5

Prior U.S. Cls.: 6, 18, 44, 46, 51, and 52

United States Patent and Trademark Office

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JOYCE A. WARD, EXAMINING ATTORNEY

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PRINCIPAL REGISTER**

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FIRST USE 4-1-1996; IN COMMERCE
5-1-1996.

SN 74-650,530, FILED 3-23-1995.

FOR: VITAMINS AND NUTRITIONAL FOOD
SUPPLEMENTS, IN CLASS 5 (U.S. CLS. 6, 18, 44,
46, 51 AND 52).

JOYCE A. WARD, EXAMINING ATTORNEY

United States of America

United States Patent and Trademark Office

BEAST MODE

Reg. No. 3,978,998

USA NUTRACEUTICALS GROUP, INC. (FLORIDA CORPORATION)

Registered June 14, 2011

3100 NW BOCA RATON BLVD. #213

BOCA RATON, FL 33431

Int. Cl.: 5

FOR: DIETARY AND NUTRITIONAL SUPPLEMENTS, IN CLASS 5 (U.S. CLS. 6, 18, 44, 46, 51 AND 52).

TRADEMARK

FIRST USE 2-1-2010; IN COMMERCE 3-1-2011.

PRINCIPAL REGISTER

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SEC. 2(F).

OWNER OF U.S. REG. NO. 2,012,763.

SN 77-925,401, FILED 2-1-2010.

NORA BUCHANAN WILL, EXAMINING ATTORNEY



David J. Kyros

Director of the United States Patent and Trademark Office